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RECORD, CASE NO. 13804.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 208.

EDWARD L. HEDDEN, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

OSCAR L. RICHARD AND EMIL L. BOAS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 17, 1889.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Oscar L. Richard and Emil L. Boas, plaintiffs, and Edward L. Hedden, defendant, a manifest error hath happened to the great damage of the said Edward L. Hedden, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the part aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and eighty-nine, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 9th day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

JOHN A. SHIELDS,
Clerk.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-seven inclusive, contain a true and complete transcript of the records and proceedings had in said court, in the case of Edward L. Hedden, plaintiff in error, against Oscar L. Richard and Emil L. Boas, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this sixteenth day of October, in the year of our Lord, one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

JOHN A. SHIELDS,
Clerk.

(Indorsed:) No. 11552. U. S. Supreme Court. Edward L. Hedden, plaintiff in error, against Oscar L. Richard & al., defendants in error. Writ of error. Edward Mitchell, U. S. atty., attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby ad-

mitted this 10th day of October, 1889, with the same force and effect as if the same had been allowed and served twenty days prior to the commencement of the October term of the U. S. Supreme Court for 1889. Albert Comstock, attorney for defendants in error. U. S. Circuit Court. John A. Shields. Filed Oct. 10, 1889.

3 Superior court of the city of New York.

OSCAR L. RICHARD AND EMIL L. BOAS, plaintiffs, *against* EDWARD L. HEDDEN, COLLECTOR OF THE port of New York, defendant. } Summons.

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint

Dated, March 23, 1887.

ALBERT COMSTOCK,
Plaintiffs' Attorney.

4 Office and post-office address, No. 44 Broadway, New York City.

(Indorsed:) Superior court of the city of New York. Oscar L. Richard & ano., plaintiffs, against Edward L. Hedden, defendant. Summons. Albert Comstock, plaintiffs' attorney, 44 Broadway, New York. Due service of a copy of the within summons is hereby admitted this 23rd day of March, 1887. E. L. Hedden, per F. S. McAvoy, att'y in fact, U. S. circuit court. Filed, Oct. 7, 1889. John A. Shields, clerk.

5 *The President of the United States of America. To the judges of the superior court of the city of New York, greeting:*

We, for certain reasons, being desirous that our circuit court of the United States, for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against E. L. Hedden, defendant, by Oscar L. Richard & ano., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 16 day of April, 1887, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, chief justice of the Supreme Court of the United States, the 11 day of April in the year one thousand eight hundred and eighty-seven.

[SEAL]. [L. S.] TIMOTHY GRIFFITH,
Clerk.

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

6 (Indorsed:) 11552. U. S. circuit court. Oscar L. Richard & ano. vs. E. L. Hedden. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. I hereby depute R. L. Burnet to serve the within writ. Dated, Ap'l 11, 1887. M. T. McMahon, U. S. marshal. U. S. circuit court. Filed, Apr. 11, 1887. John A. Shields, clerk. I have this day personally served upon the clerk of the superior court of the city of New York a duplicate of the within writ, at the same time showing the original. M. T. McMahon, U. S. marshal. By R. L. Burnett, dep. mar. Dated, N. Y., Apr. 11, 1887. U. S. marshal's office, S. D., N. Y. Received Apr. 11, 1887.

7 United States circuit court for the southern district of New York.

OSCAR L. RICHARD AND EMIL L. BOAS, plaintiffs, *vs.* EDWARD L. HEDDEN, COLLECTOR OF THE port of New York, defendant. } Complaint.

Plaintiffs complain:

1. That defendant was, during the time hereinafter mentioned, collector of customs of the United States at the port of New York.

2. That the plaintiffs were, during such times, partners in trade doing business in the city of New York, and elsewhere under the firm name of C. B. Richard & Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars.

3. That the plaintiffs in order to obtain said goods were compelled to pay the defendant as such collector the sum of five hundred and fifty dollars in excess of the lawful rate of duty on said goods and of the amount required by law.

4. That plaintiffs filed with said defendant due and timely protest in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto.

8 5. That plaintiffs made due and timely appeal on each entry, to the Secretary of the Treasury, whose decision on each appeal has been either rendered within ninety days previous to the commencement of this action, or delayed more than ninety days subsequent to the date of lodging such appeal.

6. That the bill of particulars hereto annexed, states for each importation separately the date of entry at the custom-house, of payment of duty in excess of the filing of said protests of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered, together with other particulars required by law, and is made a part hereof.

7. That said sum, so exacted as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore, plaintiffs demand judgment against defendant for the sum so exacted as aforesaid with interest on the several sums named in the bill of particulars, from the respective date of payment as appears thereby, together with the costs and disbursements of this action.

ALBERT COMSTOCK,
Plaintiffs' Attorney, 44 Broadway, New York.

Name of importer, C. B. Richard & Co., comprising Oscar L. Richard and Emil L. Boas.

Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
Furniture, in piece, &c.....	Wsetin	Gellert	Feb. 28, 1886	Apl. 1, 1886	75	Apl. 1, 1886	May 18, 1886	May 18, 1886	Dec. 27, 1886
" " "	"	Westphalia.....	" 28, "	Mch. 24, "	10	Mch. 24, "	June 8, "	June 8, "	" 27, "
" " "	"	Moravia.....	Mch. 15, "	Apr. 13, "	100	Apl. 13, "	July 16, "	July 16, "	None.
" " "	"	Rugia	" 23, "	" 19, "	100	" 19, "	Aug. 31, "	Aug. 31, "	"
" " "	"	Rhaetia	Apl. 1, "	May 4, "	200	May 4, "	Sept. 9, "	Sept. 9, "	"
" " "	"	Moravia	" 12, 14, "	" 17, "	25	" 18, "	Dec. 10, "	Dec. 10, "	"
" " "	"	Suevia.....	May 14, "	June 14, "	40	June 17, "	" 24, "	" 24, "	"
					$550				

10 (Indorsed :) No. 11552. U. S. circuit court, southern district of New York. Oscar L. Richard et al, plaintiffs, against Edward L. Hedden, as collector of the port of New York, defendant. Complaint and bill of particulars. Albert Comstock, plaintiffs' attorney, 44 Broadway, New York. A copy of the within paper has been this day received at this office, Apr. 21, 1887. Stephen A. Walker, U. S. Attorney, U. S. circuit court. Filed Oct. 7, 1889. John A. Shields, clerk.

11 Circuit Court of the United States for the southern district of New York.

OSCAR L. RICHARD ET AL.
versus
EDWARD L. HEDDEN, COLLECTOR, ETC. } N. S. 11552.

The defendant answers to the complaint as follows:

I. He denies that the true duty, or that the true and lawful rate of duty, on the goods referred to in the complaint, was as stated in the complaint; and he denies that the plaintiffs were compelled to pay or did pay defendant as collector or otherwise the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise, or that the same was paid in order to obtain possession of said goods.

II. He denies that the plaintiffs filed with the defendant any protest or protests as required by section 3011 of the Revised Statutes of the United States.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the time therein mentioned were in fact such goods as are described in the said complaint.

V. And further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And further answering, he alleges that this action was not brought within ninety days after the decision of the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon; or within ninety days after payment of duties paid thereon after such decision.

VIII. And further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And further answering, the defendant alleges that all moneys received by him from the plaintiffs, in respect of the importations in the complaint alleged to have been made, were demanded of the plaintiffs and were by the plaintiffs voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith before the commencement of this action and bebefore the receipt by defendant of any protest or objection on the part of the plaintiffs paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And further answering, the defendant alleges that all moneys received by him from the plaintiffs, in respect of the importations in the complaint alleged to have been made, were sums due from the plaintiffs to the United States as duties, according to the rate of duty imposed by law,

upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

12 (Indorsed:) 11552. U. S. circuit court, southern district of New York. O. L. Richard et al. vs. E. L. Hedden, collector, etc. Copy. Answer. Stephen A. Walker, United States attorney, attorney for defendant. U. S. circuit court. Filed Ap'l 7, 1888. Timothy Griffith, clerk.

13 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the 14th day of May, in the year of our Lord one thousand eight hundred and eighty-nine. Present: The honorable E. Henry Lacombe, circuit judge.

OSCAR L. RICHARD ET AL.
vs.
EDWARD L. HEDDEN. } No. 11552.

Now come the plaintiffs, by Stephen G. Clarke, esq., their counsel, and move the trial of this cause.

Likewise comes the defendant, by Thomas Greenwood, esq., assistant United States attorney, his attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the respective parties and the argument of counsel, the jury, on the 15th inst., by direction of the court, say that they find a verdict for the plaintiffs in the sum of four hundred and forty-three dollars and twenty-four cents ($\$443\frac{24}{100}$).

Thereupon the jury render a verdict whereby they find for the plaintiffs in the sum of four hundred and forty-three dollars and twenty-four
14 cents ($\$443\frac{24}{100}$), and so they say all.

On motion of Thomas Greenwood, esq.,

Ordered: That the defendant have a stay of sixty days in which to make and serve a case, with leave to turn the same into a bill of exceptions.

On like motion ordered that a certificate of probable cause be granted.

An extract from minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*
T. W. S.

15 United States circuit court for the southern district of New York.

OSCAR L. RICHARD ET AL.
vs.
EDWARD L. HEDDEN, COLLECTOR, &C. } N. S. 11552.

The issues in the above-entitled action having been brought on for trial before the Hon. E. Henry Lacombe and a jury at the April term, 1889

and the jury having found a verdict for the plaintiffs on the 14th day of May, 1889, for the sum of four hundred forty-three $\frac{24}{100}$ dollars, and plaintiffs' costs having thereafter been duly adjusted at the sum of forty-eight $\frac{35}{100}$ dollars, now, on motion of Albert Comstock, attorney for plaintiffs, it is hereby

Ordered, adjudged, and decreed that the plaintiffs, Oscar L. Richard and Emil L. Boas, recover of the defendant, Edward L. Hedden, the sum of four hundred forty-three $\frac{24}{100}$ dollars damages, and the sum of ten $\frac{53}{100}$ dollars, being interest thereon from the date of verdict, together with the sum of forty-eight $\frac{35}{100}$ dollars costs, making in all the sum
16 of five hundred and two $\frac{12}{100}$ dollars ($502.12), and that the plaintiffs have execution therefore.

Dated New York, October 7th, 1889.

Judgment signed this seventh day of October, A. D. 1889.

JOHN A. SHIELDS,
Clerk.

(Endorsed:) 11552. Circuit court of the United States, southern district of New York. Oscar L. Richard & ano. vs. Edward L. Hedden. Judgment. Albert Comstock, pl'ffs' atty., 44 Broadway, N. Y. City. U. S. circuit court. Filed Oct. 7, 1889, 4 p. m. John A. Shields, clerk.

17 U. S. circuit court, southern district of New York.

OSCAR L. RICHARDS ET AL., PLAINTIFFS,
against
EDWARD L. HEDDEN, DEFENDANT. } N. S. 11552.

Defendant's bill of exceptions.

Afterwards, to wit, on the 15th day of May, 1889, at a stated term of this court begun and holden on the first Monday of April, 1889, before the Hon. E. Henry Lacombe, circuit judge, the aforesaid issue so joined as between the said parties as aforesaid as by the record more fully appears came on to be tried by a jury duly impannelled and sworn for that purpose, the said plaintiffs being represented by Stephen G. Clarke, esq., and Albert Comstock, esq., and the said defendant by Stephen A. Walker, esq., U. S. attorney, and Thomas Greenwood, esq., asst. U. S. attorney.

And in the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the rulings, instructions, charges, and directions of the court, and to its refusal to give certain instructions and directions to the jury as then and there prayed for by the defendant therein, which exceptions are hereinafter severally set forth.

18 To sustain the issues on their part the plaintiffs introduced testimony tending to show that they imported into the port of New York from Wsetin for the account of Jacob and Josef Kohn, by the Gellert April 1, by the Westphalia March 24, by the Moravia April 13, by the Rugia April 17, by the Rhaetia May 4, by the Moravia May 17, and by the Suevia June 14, 1886, certain Vienna bent-wood furniture consigned to the plaintiffs by the aforesaid Jacob and Josef Kohn, manufacturers thereof, and doing business at Vienna, Austria, and in the city of New York.

That the defendant, as collector of customs at the port of New York, classified this furniture as "furniture finished" under the provision for "cabinet ware and house furniture, finished" contained in schedule D of the tariff act of March 3, 1883, and exacted thereon of the plaintiffs duty at the rate of 35 per centum ad valorem, which amount was paid by plaintiffs to defendant as said collector.

That against this classification and exaction the plaintiffs duly protested, claiming that this furniture was "in pieces and not finished," and therefore dutiable at 30 per centum ad valorem only under the provision for "house or cabinet furniture, in piece or rough, and not finished," contained in the aforesaid schedule D.

That thereafter, as prescribed by law, the plaintiffs in due time appealed and brought this suit to recover the duty exacted on this furniture in excess of duty at the rate of 30 per centum ad valorem.

The plaintiffs then produced as a witness in their behalf Franklin Aiery, who, being duly sworn, testified:

19 That he was then, and for five years last past had been, the manager for the bent-wood firm of Jacob and Josef Kohn at their place of business in Fourteenth st., in the city of New York; that at the time the furniture in suit was imported he had received the same, and was then able to produce a sample thereof in the condition as received, and that he did so.

This sample was afterwards put in evidence by the plaintiffs and marked Exhibit S, and was in pieces.

These pieces were the back, side, and seat (each of which was in a permanent form, ready to be put together as part of the chair), and the legs, ring, braces, were each of them completely shaped, smoothed, and fitted one to another, varnished, or painted and varnished, and with all the holes therein for the necessary screws and bolts for fastening or putting the same together, and were accompanied by all such necessary screws and bolts so that all these pieces were entirely ready and in a condition to be put together and to constitute a completed ordinary bent-wood chair.

The witness, Aiery, further testified on direct examination that the parts of furniture like sample S are imported into this country wrapped in paper and straw, and the firm of whose business he was manager unpacked them and put them together; that these parts were chiefly put together with bolts and screws; that the legs are screwed on the seat; then the back is screwed on the back of the seat; the (wooden) ring is afterwards put in between the legs and fastened with screws, and the braces

20 screwed on; that after that it goes to the polisher's hands, the screws are all touched up, it is finished fit for the customer, and then it becomes a bent-wood chair; that all these parts or pieces constitute a chair when put together; that then it is bought and sold, and known in trade and commerce, and common life, and everywhere else as a piece of furniture; that the entire equipment for each chair comes out from Europe complete; that the putting together and finishing is what his house does here; that the furniture in suit besides chairs like sample S was composed of settees, rockers, and other varieties of chairs; that they all come in the same condition as sample S, and go through the same process afterwards.

The witness, Aiery, on cross examination testified that he had been connected as manager in the city of New York with the firm of Jacob and

Josef Kohn for five years; that prior to that he was a portrait artist, portrait painter; that he was not thoroughly familiar with the manufacture of furniture like that in suit; that he attended to the general management of the business of said firm in said city; that the bolts and screws came over together with the furniture in suit; and everything as received by that firm was ready to put up.

This witness was then asked the following questions and made the following answers:

Q. Are you able to state, from your experience as manager of the house of Jacob and Josef Kohn, whether each piece of furniture like Ex-
21 hibit S can be take' to pieces entirely and can be easily put together without the use of glue by anyone?

A. It can not be put together by a woman, who has had no experience in the mechanical arts. That [referring to a catalogue of that firm shown this witness] is a trade catalogue and is meant for the furniture trade.

Q. By "anyone," then, it does not mean what it says?

A. It signifies anyone with ordinary cabinet ability in the trade.

This witness further cross-examined testified that he did not directly know about the manufacture of the furniture in suit; that it came into the port of New York in the shape in which Exhibit S then was, with the bolts and screws, with paper wrapped around it, and put in boxes or cases; that it was put in that form for shipment to save space and to save freight; that, after it arrived in this country and was received by the firm, it was occasionally sold as received in boxes or cases, that ordinarily it was put together before it was sold by the firm if it was sold in the city of New York, but that, if it was sold out of this city, it was or was not sold in boxes or cases, according to the distance it was sent; that he would not say that that was the usual way; that his firm shipped the majority of his goods "set up;" that his firm did not sell the majority of their goods in the city of New York; that it had trade all over the United States, Canada, and Mexico; that it shipped them to Mexico, Canada, New
22 Orleans, and San Francisco "knocked down," as they come from Europe; that he was familiar with the term that is used in the furniture trade of "finished and boxed."

This witness was then asked the following questions and made the following answers:

Q. What is furniture "finished and boxed;" describe it?

A. Forniture "finished and boxed," as I would interpret it, would be all ready for the consumer and then boxed.

Q. It is "knocked down," isn't it?

A. Not necessarily.

Q. Doesn't that expression cover furniture "knocked down?"

A. Not furniture "knocked down." You didn't use that term; you said furniture boxed.

Q. I said "finished and boxed."

A. "Finished and boxed?"

Q. Now, doesn't that term "finished and boxed" include "knocked down" furniture of the kind like Exhibit S put into boxes?

A. It may and may not.

Q. Does it, as a matter of fact?

A. It may include it.

Q. Don't the furniture trade say that it is that kind of furniture?

A. That I couldn't tell you.

Q. Then you are not familiar with the trade?

A. Not entirely with the furniture trade; no, sir.

This witness further testified that after his firm "set up" or put together furniture like Exhibit S they touched it up, and if necessary refinished it up with an extra coat.

Q. That is to say, if it has been jammed or bruised or knocked a little bit, you touch it up?

23 A. It is necessary to touch up the screws anyhow.

Q. Unless the woodwork has been jammed or crushed or bruised you don't touch that, do you?

A. No, sir.

Q. You simply touch up the screws a little which may have been rusty, or something of that kind?

A. They come unfinished.

PLAINTIFF'S COUNSEL: Q. You do that in every instance?

A. Yes, sir.

This witness, in answer to a question propounded by defendant's counsel, further testified that what came unfinished was the heads of the screws; that his firm had to touch them up to match the chairs, finish them up; that they painted or varnished them in order to make them match the chair.

Q. Then, practically, you only touch up the screws; that is about all you do after these chairs get here?

A. We do that; yes, sir.

Q. Those that you ship to foreign ports, you don't touch them in that way at all, do you?

A. You sell that as "finished" furniture, don't you?

A. "Finished"—I don't understand your term—finished furniture.

This witness on redirect-examination testified that his firm sold the chair they shipped to foreign ports just as they received them; that to put a chair together the hind legs were put onto the back, and went in there (indicating by referring to Exhibit S); that what was then

24 shown him was the ring, and went through there (indicating); that the front legs were screwed in there (indicating) with the screws that are in them; that then the heads of the screws are touched up to match the color of the chairs, the chairs coming in different colors, white and various stains; that then the legs are finished off at the bottom, and then the heads of the screws are touched up to match this; that paint or varnish was not imported with the chairs.

Q. And then if it is scratched in any way it is gone over, and then it becomes a completed chair, which you sell?

A. Then I call it a finished chair.

By the COURT:

Q. You sell it to consumers as well as to the trade?

A. Yes, sir.

Q. If you received an order from a consumer, some one not in the trade, from Elmira, say, to send a half dozen chairs, how would you send them?

A. We put them together and pack them and ship them.

By a JUROR:

Q. What percentage of the actual cost, original cost, is added by the finishing; that is, the difference between the cost as you took it into your place and the cost when you put it out; what percentage?

A. There is a difference of between 5 and 10 per cent that we always figure the difference of setting up the funiture and shipping it, not including freight.

25 The plaintiffs then produced as a witness in their behalf Frederick W. Brooks, who, being duly sworn, testified that he was a liquidator of duties at the custom-house in the city of New York; that he had made a calculation of the difference between duties at the rate of 30 per centum ad valorem claimed by the plaintiffs and duties at the rate of 35 per cent ad valorem as exacted of the plaintiffs by the defendant as collector of customs on the furniture in suit; that the amount of such difference with interest, as claimed by plaintiffs, was $443.34.

The plaintiffs then rested.

The defendant, to sustain the issue on his part, produced as a witness Joel W. Mason, who, being duly sworn, testified that he was and

26 for about the last forty-six years had been a manufacturer of chairs and general furniture; that he had a factory at Madison and Munroe streets and salesrooms at Pearl street, in the city of New York; that he sold to domestic dealers in all parts of this country and exported to foreign parts, chairs and general furniture; that he did not import and had not imported furniture, with the exception of bedsteads, but that he bought imported furniture, including chairs, in a complete, finished condition; that he never imported chairs in the condition of Exhibit S, though he had bedsteads in that condition; that the bedsteads he had imported were complete bedsteads, "knocked down" and "finished" and "boxed" or in bundles; that he was familiar with the manufacture of furniture such as Exhibit S, and that he had made similar bent-wood chairs like Exhibit S, and by the same process.

This witness, on being asked to describe the process of the manufacture of chairs like Exhibit S, testified that after the necessary wood is obtained from the tree and sawed into planks, these planks are cut up by a smaller saw into the right sizes for the lathes and turned by hand or machinery in the shapes seen in the case of Exhibit S; that then comes the process of bending the parts so obtained and turned; that that is done by steam and a powerful pressure brought to bear upon them; that after this is done, then comes the boring and the fitting of these parts and the putting in of the screws like those with Exhibit S; and all the parts are fitted together, and then the chair is made, "set up," as some call it, or put together, that the "setting up" is the driving together or putting

27 together of the parts; that then it is finished or varnished; that sometimes it is painted and sometimes varnished and polished; that there are different ways of finishing; that sometimes it is oiled and sometimes polished on the wood; that this Exhibit S has evidently been varnished after it was put together; that there was no glue used and there was no necessity of using any, and that then it was taken apart and packed in boxes or crates or matting for shipping, and shipped in that condition.

That the term "finished" had in the furniture trade in this country on and prior to March 3, 1883, a particular trade meaning; that it meant

that the chair had been painted or varnished; that the term "finished" in the furniture trade means that the chair or the article of furniture has been "finished;" you say "finished"—that it has received a varnish, or an oil, or shellac, or whatever article you put on—you would say it is "finished;" we call that "finished;" that this chair (Exhibit S.) is a "finished" chair; what we call it; that if there was no paint or varnish we would say "in the wood," or "unfinished;" that, put in boxes, we say this (Exhibit S.) is "finished and boxed;" that that is the term the trade use, and have, since I have been in the business; that the term "set up and finished" had in the furniture trade in this country on and prior to March 3, 1883, a peculiar trade meaning. On being asked to state what that was the witness answered, this chair (Exhibit S.) is
28 in parts or pieces, already to put together; when that is adjusted in its position, and the screws and nuts applied and everything, the legs screwed in, then it is "set up;" that that is called the setting up or putting together of the article.

The COURT. In its present shape it is in pieces, and when put together it is "set up?"

The WITNESS. What the trade would call it—it is now a "knocked down" chair; after these parts are put together, then it is "set up" and becomes a "finished set up" chair; now it is a "finished knocked down" chair.

This witness on cross-examination testified that the plaintiff's sample was then in pieces, that the legs were in pieces; that the furniture trade did not use the term "in piece," that it used the term "knocked down;" that it did not use such a term as "in pieces," that it said "knocked down;" that plaintiffs' sample was in a "knocked down" condition; that it had been put together in the wood; and after painting and varnishing and taking it apart, it was "knocked down;" that the furniture trade did not use the term "in piece," or "in pieces;" that he did not know it as a trade term; that the furniture trade did sometimes use the term "furniture rough" as a trade term; that "in the rough" was a trade term; that the term "in the rough" did not mean anything different from what it did to anybody who was not in the trade; that you would use the same term whether acquainted with the business or not, and that furniture "in the rough" as he understood it meant "in the wood" or "unfinished."

29 On redirect examination this witness testified that "in the rough;" or "unfinished" meant the same thing; that plaintiffs' sample was not furniture "in the rough;" that it was furniture "finished."

The defendant then produced as a witness in his behalf John D. Walsh, who being duly sworn testified that he was a chair manufacturer and was then and for about sixteen years had been a member of the firm of Heywood Bros. & Co.; that his firm had factories in Gardner, Mass., and Chicago, Ill., and stores in Boston, New York, Baltimore, Philadelphia, San Francisco, Por'land, and Los Angelos; that he was familiar with the term "finished" as used in the furniture trade in this country on and prior to March 3, 1883; that "finishing" a chair meant that it was varnished and the materials that the trade put on to it—such as oil, shellac, varnished, stained, &c.; that the trade called Exhibit S. a "finished knocked down" chair; that he was familiar with the term "finished and boxed" as used in the furniture trade on and prior to March 3, 1883;

that "finished and boxed" chairs then meant in the trade that the trade took the chairs in the wood, "finished" them, knocked them down, similarly to the way in which Exhibit S. has been, packed them, nailed them in boxes, and then they are boxed, or are chairs "finished and boxed;" that his firm had manufactured five or six or seven years the style of bent wood chairs like Exhibit S., with the exception of the bend in them being a little different; that his firm sold to the domestic trade and
30 to foreign trade; that his firm shipped their goods in different ways; that when they shipped them for export they shipped them boxed—"finished and boxed" for export; that if they shipped them to the domestic trade it all depended on the party that ordered the goods. If he was up in New York State where freight rates were low they would ship them "knocked down;" that the customer would order them that way nine times out of ten to save freight; that it would cost him three times the rate of freight on "set up and finished" chairs that it would on "finished and knocked down" chairs.

This witness on cross-examination testified that "finished and knocked down" chairs, aside from the freight would not cost the customer less; that sometimes his firm charged more for chairs in that condition; that the term "in piece," or "furniture in piece" or the term "rough" had no special meaning in the trade; that he should call a chair "in the rough" what the trade applied to it, the term "in the wood," in an unfinished state; that the trade term was "in the rough."

Q. But "rough" means the same as "not finished?"

A. It is without any varnish on it whatever.

Both sides having rested, the defendants' counsel moved the court to direct the jury to find a verdict for the defendant on the ground that the uncontradicted evidence in the case and Exhibit S. shows that plaintiffs' furniture in suit was "household furniture finished" within the meaning of the statute.

31 This motion was denied by the court, and to this ruling the defendant's counsel excepted, which exception was duly noted and allowed.

The defendant's counsel then moved the court to direct the jury to find a verdict for the defendant on the ground that the plaintiffs had not proven facts sufficient to entitle them to recover.

This motion was denied by the court, and to this ruling the defendant's counsel excepted, which exception was duly noted and allowed.

The defendant by his counsel then moved the court to allow the case to go to the jury on the question of whether the plaintiffs' furniture in suit was "household furniture finished," or "furniture in the piece and not finished" within the meaning of the statute.

This motion was denied by the court, and to this ruling the defendant's counsel excepted, which exception was duly noted and allowed.

Thereupon the plaintiffs' counsel moved the court to direct the jury to find a verdict in their favor, which motion the court granted and directed the jury to find a verdict in favor of the plaintiffs for the sum of $443.34.

To this ruling and direction the defendant's counsel then and there duly excepted, which exception was duly noted and allowed.

The jury thereupon found a verdict for the plaintiffs in accordance with the direction of the court.

32 And in as much as the defendant's said exceptions, matters, and things would not otherwise appear by the record of the said trial, therefore, on the prayer of the said defendant by this counsel, I have settled, allowed, and signed this bill of exceptions; and

It is ordered that the same be filed nunc pro tunc as part of the record herein with like force and effect as if the same had been reduced to writing, signed, and filed before the cause was given to the jury.

Witness my hand at the city of New York in the southern district of New York, this 27th day of September, 1889.

E. HENRY LACOMBE.

Sept. 26, '89.
Consented to as to form, &c.

S. G. CLARKE,
of Counsel for Pl'fs.

EDWARD MITCHELL,
U. S. Atty. & Atty. for Def't.
Q. G.

33 Sir: You will please take notice that a of which the within is a copy, was this day duly entered in the within entitled action, in the office of the clerk of the . Dated N. Y., 18 . Yours, etc., , U. S. attorney, attorney for defendant. To , Attorney for .

(Indorsed:) N. S. 11552 U S. circuit court, southern district of New York. Oscar L. Richard et al. versus Edw. L. Hedden. Defendant's bill of exceptions. Edward Mitchell, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, 188 . , attorney for plaintiff. To , attorney for plaintiff. U. S. circuit court. Filed Sept. 27, 1889. John A. Shields, clerk.

34 Supreme Court of the United States.

EDWARD L. HEDDEN, PLAINTIFF IN ERROR,
vs.
OSCAR L. RICHARD AND EMIL. L. BOAS,
defendants in error.
} Assignment of errors.

Afterwards, to wit, on the third Monday of October term in the same term before the justices of the said court at the Capitol in Washington, come the said plaintiff in error by Edward Mitchell, at'y., (his) attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff may be restored to all things which he has lost by occasion of said judgment, &c.

EDWARD MITCHELL,
U. S. Atty., Atty. for Plff. in Error.

35 (Indorsed:) United States Supreme Court. Edward L. Hedden, plaintiff in error, vs. Oscar L. Richard et al., defendants in error. Assignment of error. Edward Mitchell, U. S. at'y., attorney for plff. in error. Due service of a copy of the within assignment of error is hereby admitted this 10th day of October, 1889, with the same force and effect as if the same had been served twenty days prior to the commencement of the October term of the U. S. Supreme Court, 1889. Albert Comstock, attorney for defendants in error. To Albert Comstock, attorney for defts. in error. U. S. circuit court. Filed Oct. 10, 1889. John A. Shields, clerk.

36 UNITED STATES OF AMERICA, *ss:*

To Oscar L. Richard and Emil L. Boas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and eighty-nine, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edward L. Hedden is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Dated Oct. 9th, 1889.

E. HENRY LACOMBE.

37 (Indorsed:) E. and A. A. 874. N. S. 11552. U. S. Supreme Court. Edward L. Hedden, plaintiff in error, against Oscar L. Richard, et al, defendants in error. Citation. Edward Mitchell, U. S. atty, attorney for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 10th day of October, 1889, with the same force and effect as if the same had been allowed and served twenty days prior to the commencement of the October term of the U. S. Supreme Court for 1889. Albert Comstock, attorney for defendants in error. U. S. circuit court, John A. Shields, clerk. Filed October 10, 1889.

38 (Indorsement on cover:) Supreme Court U. S. Clerk's office. Received Oct. 17, 1889. No. 208. Edward L. Hedden, collector of the port of New York, plaintiff in error, vs. Oscar L. Richard and Emil L. Boas. 13804. S. New York. C. C. U. S. Filed October 17, 1889.

149 U.S. 298

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Supreme Court of the United States.

OCTOBER TERM, 1892

ELIZABETH C. HEDDEN, EXECUTRIX, ETC., plaintiff in error,
vs.
OSCAR L. RICHARD AND EMIL L. BOAS. } No. 208.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

WM. A. MAURY,
Assistant Attorney-General, and of Counsel, etc.

Supreme Court of the United States.

OCTOBER TERM, 1892.

ELIZABETH C. HEDDEN, EXECUTRIX, ETC., plaintiff in error,
vs.
OSCAR L. RICHARD AND EMIL L. BOAS. } No. 208

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

This case, as appears by the bill of exceptions (pp. 7–14), arose upon several importations of Vienna bentwood furniture into the port of New York, by the defendants in error, for the account of Jacob and Josef Kohn, who were the manufacturers of the merchandise. To save freight, the furniture thus imported was all in parts and pieces and to be put together again when it reached its destination.

The intestate of the plaintiff in error, the collector of said port, classified the merchandise as "*furniture finished*," under Schedule D of tariff act of March 3, 1883, and assessed duty at the rate of 35 *per centum ad valorem*.

Against this action of the collector the defendants in error protested, insisting that the merchandise should have been classified, under another provision of the same schedule, as furniture "*in pieces, and not finished,*" and duty assessed at 30 *per centum ad valorem.*

This action is brought to recover back the 5 per centum difference, as so much money illegally exacted.

The case came on for trial before Judge Lacombe and a jury on May 14, 1889, and resulted in a verdict for the plaintiff for $443.24 (p. 6), and judgment was entered accordingly on October 7, 1889 (p. 7).

After testimony had been given on both sides as to when this sort of furniture is finished or not finished, in the trade sense, the counsel for the defendants intestate asked the court to direct a verdict for the defendant, on the ground that the uncontradicted evidence showed that the furniture in question was "household furniture finished" within the meaning of the statute, which request the court refused (p. 13).

The counsel for the defendants intestate renewed his request, on the ground that the plaintiff's evidence would not support a verdict for them, but the court refused the request (p. 13).

The counsel for the defendants intestate then moved the court to allow the case to go to the jury "on the question whether the plaintiffs' furniture in suit was 'household furniture finished' or 'furniture in the piece, and not finished,' within the meaning of the statute," but the court denied the motion (p. 13), and the bill of exceptions states that the court, on motion of the plaintiffs'

counsel, directed a verdict for the plaintiffs, which the jury accordingly gave (p. 13).

But this last statement in the bill is a mistake, if the report of the case in the Federal Reporter (*Richard* v. *Hedden*, 42 F. R., 674) is to be relied on. According to that report Judge Lacombe instructed the jury as follows:

> LACOMBE, J. (orally).
>
> The collector classified the articles in suit under the two hundred and thirtieth paragraph of the tariff act as "cabinet ware and house furniture, finished," and laid upon them a duty of 35 per centum *ad valorem*. The plaintiffs claim that such classification was wrong, and that it should have been held dutiable at 30 per centum *ad valorem*, under paragraph 229, which reads: "House or cabinet furniture in piece, or rough, and not finished." Of course the presumption is that the collector's decision was right, in the absence of any testimony. Therefore, in all these actions to recover duties, it is for the plaintiffs, by a fair preponderance of proof, to satisfy the jury that the collector was in error in his assessment. In order to do so in this case, the plaintiffs must satisfy you of two things: (1) That the articles here are either "in piece" or "rough." As to that branch of the case, I may instruct you that there is no conflict of testimony. These articles are furniture in piece. The plaintiffs must go further, however, and satisfy you (2) that these articles, "furniture in piece," are "not finished."
>
> Now the law imposing duties upon importations are intended for practical use and application by men engaged in trade and commerce, and the language adopted by the legislature, particularly in the denomination of articles, should be construed according to the commercial understanding of the terms used. Many witnesses from the furniture trade have been called to the stand, and, I think, without any exception, they have all testified that there is some particular trade meaning of the word "finished," that to the furniture trade the word "finished" means something, and that it means something other and different than it might mean to a man who was not engaged in that trade. It is for you, upon the testimony, to determine what the word did mean, in trade and commerce in this country on March 3, 1883. Having found what the trade meaning was you will then apply that meaning to these articles. If you reach the conclusion that they were "not finished," within the trade meaning of that term, then your verdict must be for the plaintiffs. Should you reach the conclusion that they were "finished," within the trade meaning of that word, your verdict will be for the defendant.

ASSIGNMENTS OF ERROR.

The judgment, now here for review, is deemed to be erroneous:

1. In this, that the court below denied the three instructions asked for by the intestate of the plaintiff in error.

2. In this, that the court below instructed the jury to find for the plaintiffs.

ARGUMENT.

The evidence of the plaintiffs' witness, Aiery, shows that the parts and pieces of the furniture in question were entirely finished, so that, after being put together, nothing remained to be done but to "touch up" the heads of the screws holding the parts together with paint or varnish, so as to make them correspond in color with the wood into which they had been forced.

That furniture in this condition is "*finished*" in the sense of the law is manifest, for the law contemplates that furniture may be imported "*in piece*" and finished and "*in rough*" and finished. It is only when "*in piece*" or "*in rough*" and "not finished" that the lower duty of 30 *per centum ad valorem* is applicable.

According to the view of the defendants in error, the lower duty is applicable to furniture "*in rough*," although *finished*, as in the several descriptions of rustic furniture, which would seem to be a totally inadmissible reading of the statute.

Such could not have been the intention of Congress, or the disjunctive conjunction *or* would have been used before the words "not finished," as it is between the words "in piece" and "rough," *i. e.*, "in piece *or* rough."

It is plain, therefore, that Congress considered that furniture "in piece" might be finished, although requiring a little manipulation to fit it for use. Congress must, also, be presumed to have legislated with full knowledge of the subject before it.

The case was, therefore, clearly with the plaintiff's intestate, without resort to the evidence that, by a well-settled usage of the trade in bent-wood furniture, furniture put together is "*finished set up*," and furniture taken apart for storage or transportation is "*finished knocked down*" (p. 12).

It is evident, therefore, that the plaintiffs have no case, and that the judge should have directed a verdict for the defendant.

WM. A. MAURY,
Assistant Attorney-General, and of Counsel, etc.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

ELIZABETH C. HEDDEN,
Administratrix,

vs.

OSCAR L. RICHARD ET AL.,
Defts. in Error.

No. 208.

BRIEF OF DEFENDANTS IN ERROR.

Statement.

In 1886, the defendants in error imported into New York certain consigned Vienna bent-wood furniture, classified by Collector Hedden, for duty, as "furniture finished," at 35%, under the clause of Schedule D, act of 1883, imposing that rate on "Cabinet-ware and house-furniture finished" (22 Stats. 502) while the importers claimed the proper duty to be that attached by the next preceding clause to "House or cabinet furniture, in piece or rough, and not finished," 30% *ad valorem*. (Rec. 7, 8.)

This claim was made, and sustained, upon the ground that the articles came into this country in pieces, and in an unfinished condition in this respect.

The several pieces came ready to be put together for the completion of the furniture, accompanied by

the necessary screws and bolts to hold the parts in position; which screws and bolts have to be 'touched up' and made to correspond in color with the wood; this putting together being the business of the New York branch of the manufacturer's house. (Rec. 8.)

Points.

The first enumeration of furniture, as a dutiable commodity, is in the 30% Schedule C of the tariff of 1846, in this connection;

"frames and sticks for umbrellas, parasols or sunshades, finished or unfinished; furniture, cabinet or household;" etc., etc. (9 Stats. 45.)

Increased 5 %, under same phraseology and collocation, by act of 1862. (12 Stats. 556.)

So, although the degree of finish, or stage of manufacture, was present to the legislative mind, it was not made to affect the duty upon furniture; which must *per se* imply the article ready for the furnishing of the cabinet or house; not for an office.

The first subjection to duty *eo nomine* of the unfinished and piece article was by the act of June 6, 1872;—

"On house or cabinet furniture, in *pieces* or rough, and not finished, thirty per centum ad valorem."
On cabinet wares and house furniture, finished, thirty-five per centum ad valorem." (17 Stats. 231.)

Thus (with 'pieces,' in the plural) it was carried into the revision. (Rev. Sts., 2d ed., p. 470.)

In this one act of 1883, the word 'piece,' in the singular, is used; but such indiscriminate use of either number, indifferently, is common to all tariff legislation.

For instance the Revised Statutes and earlier acts say "Cabinet-*wares*', etc., while this act of 1883 says "Cabinet ware"—meaning the same thing.

It was established that these words 'in piece' or 'in pieces,' like the associated word 'rough,' had no technical or trade meaning differing, from the ordinary understanding of them. (Rec. 12, middle.)

The context and language indicate no purpose of affixing to the word 'finished' any other than the common meaning 'completed,' ready for use. 'Finished' is used antithetically to 'in piece or rough and unfinished."

If in pieces, the lower duty attaches; so, even if not in pieces, if 'rough;' and whether rough or not, if not 'fiinished.'

EDWIN B. SMITH,
120 Broadway,
New York,
Of counsel for defendants in error.